

IN THE MATTER OF LICENSE NO. R-17684
MERCHANT MARINER'S DOCUMENT NO. Z-588673-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Clement C. GAINES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1915

Clement C. GAINES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 20 Sept 1971, an Administrative Law Judge of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for one month on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Radio Officer on board the United States SS DEL ORO under authority of the captioned documents on or about 9 August 1971, Appellant wrongfully failed to attend a boat drill.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records and the testimony of the Master and Chief Mate. The Administrative Law Judge introduced in evidence a Station Bill Card.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents, issued to him for a period of one month on twelve months' probation.

The entire decision was served on 22 September 1971. Appeal was timely filed on 3 March 1972.

FINDINGS OF FACT

On 9 August 1971, Appellant was serving as Radio Officer on board the United States SS DEL ORO and acting under authority of his license and document while the ship was at sea. On this date fire and boat drills were conducted with the Appellant properly manning his instruments in the radio room during the fire drill. Subsequent to this drill the signal for boat drill sounded with all hands securing from fire stations and manning their respective boat stations with the exception of the Appellant who remained in the radio room.

Appellant's assigned station at boat drill was at the No. 2 boat and it was his responsibility to provide the emergency radio transmitter which is normally stowed on the bridge.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that there was a failure to prove that Appellant wrongfully failed to attend boat drill.

APPEARANCE: Kierr, Gainsburgh and Benjamin by Robert H. Blomefield, Esq.

OPINION

While the word "wrongfully" is often mechanically inserted into specifications in these proceedings it is not always a necessary term for a valid allegation of misconduct. We must also consider misconduct within the statutory and regulatory responsibilities and the customs of the sea which impose certain standards of performance upon seamen. If the proof is sufficient then there is misconduct and the charge is proven.

Appellant has been going to sea for nearly a quarter of a century and it is apparent to myself as it was to the Judge that he knew or should have known his statutory and regulatory obligations and perforce his duties and responsibilities for all emergency evolutions. As a ship's officer Appellant not only had the intelligence but had a duty to inquire as to his station(s) during all emergency drills. His sole defense was that he did not know because he wasn't personally instructed and therefore was "laboring under a false assumption" as to what his duties were. I do not find his arguments very persuasive.

Every seaman reporting aboard a vessel for the first time is well aware of the posted Station Bill throughout the vessel which is a statutory requirement. This Bill is normally posted in conspicuous locations in the vessel, particularly in crew quarters

and working spaces. This Bill sets forth the special duties and duty station of each member of the crew for the various emergencies. The posting of this Bill is the only obligation imposed upon the master of the vessel and he met this responsibility.

Appellant was also provided with an individual station card located in the radio room to facilitate familiarization with these duties. He not only failed to examine the Station Bill posted throughout the vessel but failed to read this card posted for his convenience. Not only did he fail to inquire as to his duties when he reported aboard but he failed to inquire as to his duties during prior boat drills.

The fact that Appellant was not observed absent at prior boat drills and therefore thought his station in the radio room was proper is considered to be a factor in mitigation. In viewing the minor suspension order I can only surmise that the Judge gave this similar weight. In addition, I would like to note that on vessels which carry only one Radio Officer that normally he is assigned the responsibility of bringing the portable emergency radio equipment to the boat. He is familiar with its location on the bridge because of periodic testing and is also familiar with its condition and method of operation. His responsibility for bringing this equipment to the boat during abandonment of the vessel in the overall effort in saving the lives of his shipmates cannot be overemphasized.

CONCLUSION

I can only conclude that Appellant as a ship's officer and as the only Radio Officer failed in his responsibilities and in his moral obligations to his fellow shipmates. I also conclude that in light of these irresponsibilities and his prior record that the suspension order of one month on twelve months' probation is not unduly severe.

ORDER

The order of the Administrative Law Judge dated at New Orleans, La., on 20 September 1971, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of March 1973.

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Wrongful

Defined